

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SEVENTEENTH DIVISION**

BEN MOTAL

PLAINTIFF

V.

CASE NO. 60-CV-19-184

CITY OF LITTLE ROCK

DEFENDANT

**FIRST AMENDED ARKANSAS FREEDOM OF INFORMATION ACT COMPLAINT
AND REQUEST FOR IMMEDIATE HEARING**

COMES NOW, Plaintiff Ben Motal, proceeding *pro se*, and for his First Amended Arkansas Freedom of Information Act Complaint and Request for Immediate Hearing against Defendant City of Little Rock (“the City”), does hereby state and allege as follows:

I.

Introduction

The City violated Plaintiff’s rights under the Freedom of Information Act by refusing to allow him to copy an accident report using his smart phone.

II.

Parties

A. Plaintiff

1. Ben Motal is an adult citizen and resident of Pulaski County, Arkansas. Mr. Motal has never been convicted of a felony.

2. Mr. Motal brings this appeal as a matter of right under Arkansas Code Ann. § 25-19-107, as he was actually and constructively denied his right to inspect and copy a public record, entitling Plaintiff to a hearing in this Court.

B. Defendant

3. The City of Little Rock is a political subdivision of the State of Arkansas. The City is subject to suit under the Freedom of Information Act. *City of Little Rock v. Carpenter*, 288 S.W.3d 647 (Ark. 2008).

III.

Jurisdiction & Venue

4. This is an appeal from a denial of rights under the Freedom of Information Act, Arkansas Code Ann. § 25-19-101, et seq.

5. This Court has subject matter jurisdiction pursuant to Arkansas Code Ann. § 25-19-107(a).

6. Venue lies in Pulaski County because the Defendant is a municipality located within Pulaski County, Plaintiff resides in Pulaski County, and the events leading to this lawsuit occurred entirely within Pulaski County. *See* Ark. Code Ann. § 25-19-107(a).

IV.

Background Facts

7. The preceding paragraphs are incorporated herein as if set forth word for word.

8. Plaintiff was the victim of a hit-and-run car accident on October 27, 2018. The accident was investigated by Little Rock police officers and a report was filed in the records of the Little Rock Police Department.

9. Plaintiff visited the Little Rock Police Department headquarters during regular business hours to inspect and copy the report. At the police headquarters, Plaintiff made a request in person under the Freedom of Information Act to the custodian of the accident report, Clem Tate,

to inspect and copy the report using his own copying device (his smart phone). Plaintiff provided all information requested by the City in order for it to process his records request.

10. At all relevant times, Ms. Tate was acting in her capacity as the custodian of the accident report and in the course and scope of her role as an agent for the City of Little Rock.

11. Ms. Tate retrieved the written report and advised Plaintiff that he could view the report, but that he would not be allowed to inspect or copy the report by taking photographs of the pages with his smart phone. Ms. Tate stated that this was a City policy and that she was not authorized to deviate from it. Ms. Tate further stated that if the Plaintiff wanted to receive a copy of the report, the police department would make him a copy at the cost of \$10.00.

12. Plaintiff advised Ms. Tate that he did not wish to receive a copy of the report from the police department at a cost of \$10.00. Instead, he wished to inspect and copy the report using his smart phone. Plaintiff advised Ms. Tate of his right under the Freedom of Information Act to inspect and copy the report with his own device.

13. Nonetheless, Ms. Tate, acting on behalf of the City, refused to allow Plaintiff to photograph the police report. Plaintiff left the police station without a copy of the report. As of the date of this filing, he has not been able to obtain a copy of the report as a result of the City's denial of his FOIA rights.

14. The City did not base its denial of Plaintiff's rights on any suspicion that Plaintiff was not an Arkansas resident or may have a felony conviction. Rather, it is the City's policy to deny all persons the right to inspect and copy accident reports with their smart phones.

V.

Count One: Refusal To Permit An Arkansas Citizen To Inspect & Copy Public Records Using His Own Personal Device

15. The preceding paragraphs are incorporated herein as if set forth word for word.

16. The Freedom of Information Act “provides that any citizen of the State of Arkansas shall have the right to inspect and copy all public records.” *Ryan & Co. Ar, Inc. v. Weiss*, 263 S.W.3d 489, 492 (Ark. 2007); Ark. Code Ann. § 29-19-105(a)(2)(A). The Arkansas Supreme Court has consistently held that the Freedom of Information Act must be given a liberal interpretation to promote its purpose of allowing free access to public records. *Department of Ark. State Police v. Keech Law Firm, P.A.*, 516 S.W.3d 265, 267 (Ark. 2017) (“This Court interprets FOIA liberally to accomplish the purpose of promoting free access to public information.”); *Harris v. City of Fort Smith*, 197 S.W.3d 461, 467 (Ark. 2004). This is because “[s]tatutes enacted for the public benefit should be interpreted most favorably to the public.” *Arkansas Gazette Co. v. Pickens*, 522 S.W.2d 350 (Ark. 1975). Whenever the Act’s intention is doubtful, it must be interpreted in favor of free public access. *Keech Law Firm*, 516 S.W.3d at 267 (“If the intention is doubtful, openness is the result.”); *Ragland v. Yeargan*, 702 S.W.2d 23, 25 (Ark. 1986).

17. Ark. Code Ann. § 25-19-105(a) provides “[e]xcept as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.” No exception listed in that section is applicable in this case and no law specifically prevents the inspection or copying of the records in question.

18. Ark. Code Ann. § 25-19-105(d)(1) provides, “[r]easonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.”

19. The City’s violation of the Freedom of Information Act, including but not limited to the provisions set forth herein, is the legal and proximate cause for the Plaintiff’s inability to

inspect and copy the accident report in the manner he was legally entitled under Ark. Code Ann. § 25-19-105.

20. The City's actions were unreasonable, arbitrary, capricious, and in bad faith, and were made despite actual knowledge of Plaintiff's rights under the Freedom of Information Act.

VI.

Relief Sought

WHEREFORE, based on the foregoing, Plaintiff Ben Motal prays that the Court will:

- A) Find that the Defendant failed to comply with the Freedom of Information Act;
- B) Order that the Defendant allow the Plaintiff to copy the public records in question with his own personal device as permitted by state law;
- C) Set a date the complaint is to be heard within seven (7) days of the date of this application, and hear and determine the case as required by Arkansas Code Ann. § 25-19-107(b);
- D) Grant Plaintiff reasonable legal fees and costs in pursuing this matter; and
- E) Grant all other just and proper relief, whether or not prayed for specifically herein.

Respectfully Submitted,



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PRO SE PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2019, I electronically filed the foregoing with the Clerk of Court using the eFlex Electronic Filing System, which shall send notification of such filing to opposing counsel at their designated email addresses.


Ben Motal